3

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

GUST FONDAHN, *Appellant,*

vs.

SCHOONER "C. S. HOLMES," etc. *Appellee.*

No. 2698

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

BRIEF OF APPELLEE

R. A. BALLINGER,
ALFRED BATTLE,
R. A. HULBERT, and
BRUCE C. SHORTS,
Proctors for Appellee.

901-907 Alaska Building,
Seattle, Washington.

The Ivy Press, Third and Columbia, Seattle

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

GUST FONDAHN,
Appellant,
vs.
SCHOONER "C. S. HOLMES," etc.
Appellee.

No.....

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

BRIEF OF APPELLEE

R. A. BALLINGER,
ALFRED BATTLE,
R. A. HULBERT, and
BRUCE C. SHORTS,
Proctors for Appellee.

901-907 Alaska Building,
Seattle, Washington.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

GUST FONDAHN,
Appellant,
vs.
SCHOONER "C. S. HOLMES," etc.
Appellee.

No.....

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

BRIEF OF APPELLEE

STATEMENT OF THE CASE

This is an action in admiralty for injuries alleged to have been received by the libelant while he was a sailor on the Schooner "C. S. Holmes." The original libel set forth several causes of action: First, it is alleged that the accident was due to the carelessness and negligence of the captain of the vessel; second, that the captain of the vessel failed

to provide the libelant with proper medical and surgical aid, it being alleged that the captain stopped at Port Angeles and left the libelant in the hands of a doctor who was not a marine doctor, and made no arrangements to have the libelant properly cared for and treated. It is also claimed that the captain should have taken the libelant on to Port Townsend to the General Marine Hospital at that place, it being the contention of libelant that he suffered damage by reason of the failure of the captain of the vessel to place him in the hands of a competent physician and surgeon to care for his injuries and that the captain should have taken him on to Port Townsend to the Marine Hospital.

Exceptions to the original libel were sustained by the District Court, and upon appeal the Circuit Court of Appeals affirmed the judgment of the lower court as to the first cause of action, the judgment being reversed as to the second cause of action. This court said that the libel was poorly drawn, but under the rule of liberal construction given to pleadings in admiralty, the libelant should be permitted to make proof of certain allegations contained in his second cause of action. Among other things, it was alleged that: "The captain deliberately put libelant off at Port Angeles for

the purpose of getting rid of him, knowing and intending that he would at most only receive temporary relief," and that the captain tricked the doctor into accepting for his fees a permit admitting the libelant to a marine hospital, and that the doctor, upon learning that he had been deceived, and while the libelant was still in a helpless condition, requested him to leave his hospital; that "libelant was unable to move. He received no more attention or treatment for six days longer, when with considerable effort he made his way to Port Townsend." It was also alleged that blood-poison set in, and the libelant suffered from necrosis of the bone, all by reason of the captain's failure to place the libelant in the hands of a competent physician, and by reason of his deception practiced upon the doctor as well as the libelant, and that by reason thereof libelant was greatly damaged. In view of these allegations, this court said:

> "For the purpose of disposing of the exceptions, those averments are, of course, to be taken as true. So taken, it cannot, in our opinion, be properly held that the vessel is without liability. Assuming the competency of the doctor at Port Angeles, the effect of the allegations is not only that he was not employed by the captain to give to the injured seaman proper medical care, but, on the contrary, that the captain gave to the doctor a written paper

> informing him that 'it was good for all expenses incurred,' while at the same time well knowing that it was valueless for any purpose except that of the admission of the libelant to the marine hospital at Port Townsend, which averments are supported by the further allegation that the captain deliberately put the libelant ashore at Port Angeles 'for the purpose of getting rid of him, knowing and intending that he would at most only receive temporary relief,' and that even that was not accorded him. Of course no such tricks are sanctioned by the admiralty or any other law."

The allegations above referred to are wholly unsupported by the evidence.

Much of the Statement of libelant's opening brief is unsupported by any evidence. Some of these statements are partly sustained by the evidence of the libelant himself, but are contradicted by all the circumstances and by the positive testimony of all the other witnesses in the case, and are also contradicted in many respects by the libelant himself.

The Schooner "C. S. Holmes" is a sailing vessel. The libelant was employed as a sailor on this vessel. On the 31st day of January, 1913, this schooner was towed to sea by a tug boat. After they had reached the open sea, the libelant undertook to cut the lashings holding the tow line on

the vessel, so that the tug boat could return to Puget Sound and the vessel continue on its journey. While libelant was cutting these lashings and as the line gave way, the spring of the line caused a piece of wire cable and a steel hook attached thereto to fly back and strike the libelant's right arm between the elbow and the wrist, causing a compound fracture of both bones. The captain immediately assisted libelant. Splints and bandages were applied to the broken arm, and within half an hour the vessel was turned around and started back to Port Angeles. The tug boat was already out of sight, so it was necessary for the vessel to sail back to Port Angeles. The weather had been bad and was still bad. They reached Port Angeles about twelve hours later. There they secured the services of the Tug "Prosper" and the sailing vessel was towed into the harbor at Port Angeles. The captain of the Holmes asked the captain of the tug boat if there was a marine doctor in Port Angeles, and he was told that there was. A little later he also asked the captain of the United States vessel "Snohomish" if there was a marine doctor in Port Angeles, and he was informed by that officer that there was. After getting this information, the captain anchored in the harbor at Port Angeles and with the assistance of the officer of the United

States vessel "Snohomish," the libelant was taken ashore and Dr. W. J. Taylor was reached at about five o'clock in the morning. The libelant was taken immediately to Dr. Taylor's office, where an examination of his arm was made. The doctor found that both bones of the arm protruded through the skin. It was a very bad compound fracture. The libelant's arm was dirty and bits of his woolen shirt were in the wound. Dr. Taylor informed the libelant and the captain that it would be necessary for the libelant to go immediately to the hospital and have his arm attended to. The libelant was then taken immediately to the hospital, where he was put under an anaesthetic and his arm treated. This is all fully covered by the testimony of both doctors of the hospital and the trained graduate nurse in attendance. The doctor washed the wound with antiseptics and did everything he could to thoroughly cleanse the wound. He then set the bones and put on splints such as are usually used in the profession in such fractures. The arm was then bandaged and libelant was put to bed. He was taken care of by nurses and both Dr. W. J. Taylor and his brother, also a doctor, assisted in taking care of him. After a few days infection was noticed. Then it became necessary to take off

the bandages and splints in order to treat the infection. The infection then became the primary thing to attend to. This is the testimony of all the doctors and is undisputed. The libelant received daily attention from the doctors and the nurses from the time his arm was first treated until he went to the marine hospital eight days later.

It was understood by everybody that the libelant should go to the Marine Hospital at Port Townsend as soon as he was able to go, but Dr. Taylor and his brother treated the injury the same in all respects as if the patient was to remain in the hospital at Port Angeles permanently. Nothing was slighted, nothing was left undone that could have been done for the libelant by the best medical and surgical attention known to the profession.

When the captain of the Schooner "Holmes" left, he gave Dr. Taylor a permit that would allow the libelant to enter the government marine hospital at Port Townsend. This permit was held by the doctor until the libelant was able to go to Port Townsend. Dr. Taylor testified that this permit was not left with him for the payment of his services, nor was he deceived in any way regarding it. He expected to be paid for his services by the vessel, and the leaving of the permit with him had

nothing whatever to do with his treatment and care of the libelant but was simply left with him as custodian for the sailor, to be given to him when he was able to go to Port Townsend. Eight days after libelant was first taken in charge by Dr. Taylor, he was able to go to Port Townsend. His arm was infected, but there was no blood poisoning nor necrosis of the bone. Dr. Taylor and his assistants were dressing the wound and taking care of the infection, which then demanded the chief and primary attention under the testimony of all of the doctors. When the libelant was able to go to Port Townsend, his arm was prepared for the trip by Dr. Taylor and he was put on the boat, and in about two or three hours thereafter he was at the Port Townsend Marine Hospital. On account of the damage done to the soft tissues and to the periosteum and on account of the infection, the bones did not unite. This is the reason given by all of the doctors.

The doctors at Port Townsend pursued the same course that Dr. Taylor had been pursuing, namely, to clear up the infection before performing any further operation or making any further attempt to hold the bones in proper apposition, it being agreed that it was necessary to clear up the

infection and heal the wound before it would be safe to further wire the bones together or put on the Lane Plates, which all admitted was necessary to be done in order to get the bones to properly unite under the circumstances and the severity of the injuries to the bones and soft parts as aforesaid. After the infection was cleared up and the wound healed, the marine doctors cut down and brought the bones together with the use of *Lane Plates,* but on account of the injury to the periosteum the bones have not united perfectly. There is a fibrous union, but not a good strong bony union, and it will be necessary to perform another operation by the use of plates or wire. The doctors at the Marine Hospital have already advised this operation. The libelant is in perfect physical health. The wound in his arm has thoroughly healed and there is no indication of disease of any kind of the bone. The operation is a simple one and is usually successful, according to the testimony of all the doctors. There is no testimony that shows or tends to show that the libelant's condition would have been any better or that he would have suffered any less if he had been taken direct to the Marine Hospital in the first instance or if he had been put under the care of the marine doctors. Their treatment, according to the testimony, would have been

the same. There is no testimony that any damage resulted to the libelant by reason of any neglect or misconduct of the captain.

The libelant contends that the captain of the vessel made no arrangements with the doctor at Port Angeles to treat him, and that the captain put the libelant off at Port Angeles to "get rid of him," knowing that he would not be properly cared for and that he, the libelant, suffered by reason thereof. There is no testimony to support these charges. There were only a few witnesses testifying in the case, and we invite the Court to read this testimony with these charges in view. The testimony of both doctors at Port Angeles and the testimony of the trained graduate nurse at the hospital shows conclusively that everything was done for the libelant that could have been done for him at any first-class, up-to-date hospital anywhere in the country, not excepting the best marine hospital. It must be admitted that both Dr. Taylor and his brother are licensed practicing physicians; that there are two hospitals at Port Angeles, one of them, and the best one, is owned and conducted by Dr. Taylor. Dr. Taylor is the regular physician and surgeon at Port Angeles for the Chicago Milwaukee Railroad, for the county in which he resides,

and for several large mill companies, logging camps, and other institutions, as shown by his testimony. In addition to this, he has a large general practice and frequently cares for the sick and injured taken from the United States Government boats. He also frequently treats sailors that are taken from merchant ships at Port Angeles, and it must be admitted that he conducts a surgery as well equipped as any to be found in the State of Washington.

When the libelant left Dr. Taylor and went to Port Townsend, Dr. Taylor told the libelant that his bill was thirty dollars, and if he wanted to pay this amount he would give him a receipt for it, and that this would save the doctor the trouble of forwarding the claim to the vessel. He told the libelant that he could pay the bill, or he would get it from the company afterwards (Apostles 108). The doctor understood all the time that he was to receive his fees from the vessel, but he says he knew that the libelant had something over a hundred dollars with him and he put it up to the libelant whether he should pay him and collect from the vessel or whether the doctor should send his bill direct to the vessel, and without further discussion the libelant paid the bill.

The lower court held that the vessel should

pay forty-five dollars, the regular wage for the trip, and thirty dollars, the sum paid to the doctor by the libelant. This amount, together with costs, was paid into court and it was receipted for by the libelant in full satisfaction of the judgment.

POINTS.

1st. It was the duty of the vessel to take the injured libelant to the nearest port where he could receive medical attention.

2nd. The captain performed this duty when he put in to Port Angeles, the nearest port (by some 6 or 8 hours) and exercised reasonable care in engaging a competent physician and surgeon.

3rd. It was the duty of the captain to exercise reasonable care in placing the injured libelant under the care of a competent physician where he would receive competent medical and surgical aid.

4th. The captain performed this duty when he placed the libelant under the care of Dr. Taylor and his brother, who were conducting a hospital at Port Angeles and were thoroughly equipped to give to the libelant every attention and skill and up-to-date treatment.

5th. The testimony clearly shows that Dr. Taylor and his brother were competent, skilled, and experienced physicians and surgeons.

6th. The testimony also shows that Dr. Taylor and his brother gave to the libelant proper attention and treatment; that they were not guilty of any neglect or malpractice in any degree; that the libelant received the same kind of care and the same treatment recognized by the profession and the kind that he would have received at the hands of the best physicians anywhere to be found.

7th. The injuries to libelant's arm, and especially to the bones and the periosteum, were so severe that the proper union was retarded and prevented; that the failure of the bones to unite was not due to improper treatment, but was due to the severity of the injury, the damage done to the soft tissues and to the periosteum and the infection, all of which resulted in spite of the doctors' efficient treatment.

8th. The infection that followed was not due to the treatment, but came in spite of skilled and competent treatment, and the use of all the antiseptics known to the profession.

9th. It is agreed by all the doctors that infection

would be most likely to follow such an injury, and that when it appeared it became the primary thing for attention; the fracture of the bones became a secondary matter; that nothing further could be done in the way of uniting the bones until the infection was first taken care of and cleared up. The marine doctors pursued the same method and course of treatment that Dr. Taylor and his brother were pursuing at the time the libelant left their hospital to go to Port Townsend, namely, treating the infection and waiting until the wound was healed before an attempt was made to put on plates or wire the bones, that became necessary on account of the injury to the bones and the periosteum and soft tissues.

10th. The question as to whether Dr. Taylor was a marine doctor or not is immaterial in view of the fact that he was a skilled and experienced physician and surgeon, and followed the same method and the same treatment prescribed by the profession generally, and the same that would have been followed by any competent marine doctor. The question as to whether the captain made a definite agreement to pay Dr. Taylor for his services is immaterial in view of the fact that Dr. Taylor accepted the patient and looked to the vessel for

his pay and expected the vessel to pay him, and gave the libelant competent treatment and treated him in all respects the same as if he were going to remain with the Doctor in his hospital permanently. No different arrangement; no promise nor payment of money in advance, would have made any change in the efficient care and treatment given the libelant.

11th. Even if it had been shown in the evidence that Dr. Taylor had been guilty of malpractice, yet the respondent would not have been liable, for the reason that it performed its full legal duty when the captain used reasonable care in engaging the services of a competent physician and surgeon. It is not contended that Dr. Taylor was not a competent and skilled physician and surgeon, nor is it contended that the hospital was inadequate. The testimony is overwhelming to the effect that everything was done for the patient that could have been done and that the captain lost no time in getting him into the hands of competent and experienced physicians and surgeons, where he received the best of attention.

12th. The captain would have been derelict in his duty if he had undertaken to have carried the libelant in his then condition on to Port Townsend.

which would have delayed treatment for many hours and might have resulted in a case of gangrene or other serious complications. If the captain had not put in at Port Angeles, clearly the vessel would have been liable for any damage that the libelant would have suffered by reason of the delay in securing medical attention.

ARGUMENT AND AUTHORITIES.

The only question left in the case now is whether or not the captain discharged the duty of the vessel in furnishing surgical and medical care for the libelant, and whether or not the libelant was injured by reason of any neglect of the captain. All of the assignments of error in this case go to these questions.

A mere casual reading of the evidence will show that the captain exercised reasonable care and performed his whole duty towards the libelant and that the libelant was properly cared for and suffered no damage by reason of any neglect on behalf of the captain or the treatment he received from the doctors to whom he was taken by the captain.

Let us review briefly the testimony in the case. As soon as the libelant received his injury, the undisputed testimony shows that Captain Thompson immediately put splints and bandages on the broken arm and did everything that he could to relieve the libelant. As soon as this was done he went on deck and personally supervised the turning of the vessel back from the sea towards Port Angeles, the nearest port. The tug which had taken the vessel out to sea had already disappeared, so that it was necessary for this sailing vessel to get back into Port Angeles by sailing. When they neared the harbor a tug came out, and the captain asked if there was a marine doctor in Port Angeles. The captain of the tug told him that there was. He then secured a small tug to tow the vessel into the harbor. Captain Thompson then talked with an officer on the United States vessel "Snohomish," and was informed by this officer that there was a marine doctor at Port Angeles—at least a doctor who did marine work. It had taken the vessel about twelve hours to get back to Port Angeles. Every consideration demanded that the captain get him into the hands of a physician and surgeon as soon as possible. Libelant was taken ashore immediately and the captain, with the assistance of

others, got in touch with Dr. Taylor, who had been recommended to him by the officers of the other vessel there. It was five o'clock in the morning. Dr. Taylor was gotten out of bed. The libelant, together with the captain, and the officer from the vessel "Snohomish," walked up the street, met Dr. Taylor, and from there went to Dr. Taylor's office, where the arm was examined and from there the libelant was taken immediately to the Olympic Hospital—the best hospital in Port Angeles, which was then being conducted by Dr. Taylor and his brother. The libelant was there put under an anaesthetic and Dr. Taylor, with the assistance of his brother and a trained graduate nurse, dressed the arm. In doing this work Dr. Taylor used and followed the methods known to and recognized by the profession and brought the bones in perfect apposition, sewed up the muscles and soft tissues to cover the bones, and put on splints and bandages to hold the bones in place, hoping that infection would not appear and that the bones would unite. Antiseptics were used and every precaution was taken against infection.

The only theory upon which libelant can recover in this case is that the captain of the vessel, acting for the owners, violated some legal duty and that

the libelant was damaged by reason thereof. If the captain performed his legal duty, there of course can be no recovery in the case, no matter how badly the libelant was injured nor how much he has suffered. And even if the captain did violate his duty in any particular, and the libelant did not suffer by reason thereof, then of course there can be no recovery. We have read the testimony carefully and have been unable to find any evidence sustaining the proposition that the captain violated any duty that he owed to the libelant. It is also impossible to find any evidence showing that the libelant suffered any damage by reason of any act of the captain. We have read libelant's brief and looked through it in vain to find just how and in what manner it is claimed that the libelant sustained any damage by reason of anything that the captain did in violation of his duty.

It was the duty of the captain on behalf of the ship after the accident to take the libelant to the nearest port where medical and surgical aid could be secured. It will be admitted that Port Angeles was the nearest port. If a physician and surgeon could be secured at Port Angeles, then it was the duty of the captain to stop there and secure the services of such physician and surgeon. The

captain, upon inquiry, found that there was a competent physician and surgeon at Port Angeles. He stopped there and put the libelant in the hands of this physician and surgeon who properly treated him. If the testimony of both the doctors and the trained nurse can be believed, then the libelant was properly treated and everything was done for him that could have been done. Certainly the captain did exactly the right thing in stopping at Port Angeles and not taking a chance of further delay, which might have resulted in serious suffering and injury to the libelant.

The captain of a vessel is not bound to take an injured sailor to a marine hospital or to a marine doctor. Counsel for libelant in his brief seems to insinuate that it was the duty of the captain to take the libelant on to Port Townsend to the marine hospital and to the marine doctors located there, but this was not the legal or moral duty of the ship. On the contrary, it was the clear legal duty of the master to put into Port Angeles, where the libelant under all the circumstances could be treated by a physician and surgeon at the earliest possible moment. In fact, if the captain had continued on to Port Townsend and the libelant had suffered on account of the delay, then the ship would have

been clearly liable for the damage sustained by such delay, if it had been shown that there was a physician and surgeon at Port Angeles that could have been secured.

In the case of *The Troop,* 128 Fed. 865, the libelant claimed damages by reason of the fact that the master carried him past Port Angeles on to Port Townsend, thereby causing unnecessary delay in securing treatment.

It took the sailing vessel twelve hours after the accident to reach Port Angeles. The libelant was badly injured. It was necessary to get him to a doctor as soon as possible. If they had carried him on to Port Townsend, the libelant might well have contended that if he had received aid at Port Angeles, the results would have been better.

Under all the authorities, the captain performed his full legal and moral duty when he put into Port Angeles as quickly as he could and there secured the services of a physician and surgeon for the libelant.

Counsel in his brief says that the captain gave as one of the reasons why he did not go to Port Townsend, that it would cost the ship one hundred dollars more than it would to go to Port Angeles. The captain gives his reason for going into Port Angeles as follows:

> "Q. Now why did you put into Port Angeles instead of continuing down to Port Townsend?
>
> A. I did that simply because it was 12 hours after the accident when we arrived at Port Angeles, and I knew the man's arm was in bad shape, and it was up to me to get him to the nearest doctor. If I had kept on and gone to Port Townsend we probably would have got there late in the afternoon, and it would have been so much further, so much longer time, and his arm was in bad condition without medical attendance.
>
> Q. Did you believe that you could get proper treatment from the marine doctor at Port Angeles when you put in there?
>
> A. I certainly did. The man being a regularly licensed doctor the man should get good treatment. Besides, the law says, I believe, that I should go to the nearest doctor."

The captain admits that he also considered the expense. He had a right to do this; but it is clear from his testimony that his primary and first thought was to get the injured man to the nearest doctor.

In the case of *Iroquois,* 194 U. S. 240 (48 Law Ed. 955), the court said:

> "Each case must depend upon its own circumstances, having reference to the seriousness of the injury, the care that can be given the sailor on shipboard, the proximity of an intermediate port, the consequences of delay to the interests of the shipowner, the direction of the wind and the probability of its continuing in the same direction, and the fact whether a surgeon is likely to be found with competent skill to take charge of the case. With reference to putting into port, all that can be demanded of the master is the exercise of reasonable judgment and the ordinary acquaintance of the seaman with the geography and resources of the country. He is not absolutely bound to put into such port if the cargo be such as would be seriously injured by the delay. Even the claims of humanity must be weighed in a balance with the loss that would probably occur to the owners of the ship and cargo. A seafaring life is a dangerous one, accidents of this kind are peculiarly liable to occur, and the general principle of law that a person entering a dangerous employment is regarded as assuming the ordinary risks of such employment is peculiarly applicable to the case of seamen."

The captain exercised his best judgment, and it will be conceded that he took the libelant to the nearest port and nearest doctor.

It was the duty of the captain to exercise reasonable care in selecting and securing a competent physician and surgeon to care for the libelant. A casual reading of the testimony in this case will show that the captain exercised such care. As soon as the sailor was injured, the captain turned back to port. He asked the captain of the first tug that they met if there was a doctor at Port Angeles, and was told that there was. He then inquired of the captain of the next tug that he met and also of an officer aboard the United States ship "Snohomish." They all told him there was a doctor at Port Angeles. In addition to this, the fact remains that Dr. Taylor and his brother are competent physicians and surgeons. The undisputed testimony shows that there are eleven doctors in Port Angeles and two hospitals. Dr. Taylor owns one of these hospitals. The hospital is equipped with all the modern appliances and conveniences for medical and surgical treatment. The operating room is as well equipped as any modern operating room to be found in any of the hospitals in the State of Washington. Dr. Taylor so testifies, and if this were not true, counsel for libelant, who visited the place, would be on hand with testimony to dispute the doctor's assertions. Dr. Taylor is a regularly licensed physician and surgeon. Dr.

Taylor does medical and surgical work for the County of Clallam, several large mill companies and railroad companies. The doctor testified as follows:

> "A. I am the appointed surgeon for the Milwaukee Railroad there. I received that appointment when the Milwaukee took over that railroad the first of January last. I am the Milwaukee surgeon under Dr. Bouffleur, of Seattle. I have a contract as doctor for the Port Crescent Shingle Mill Company; the Howell, Hill & Ray Shingle Mill; the Hanson, Ballard, Shingle and Sawmill and the Merrill Mill Company. Besides that, I have a contract with the county to do the county poor work; that is, my hospital has that, the county poor work, we have a contract for that. Also with the Erickson Construction Company while they are building roads there.
>
> Q. You attend to all the surgical and medical work for the county and for these various companies?
>
> A. Yes sir.
>
> Q. Including the railroad and besides your general practice?
>
> A. And my general practice."

The captain not only exercised reasonable care in his inquiries about a doctor, but he actually obtained a competent and skilled physician and surgeon and an up-to-date hospital for the libelant, and it is not even contended now by the attorney for the libelant that the captain did not perform

his duty in this regard. When the captain exercised reasonable care in securing the services of a competent physician and surgeon, the ship is not liable for the results, nor for malpractice or mistake of the doctor.

Campbell v. Frank Gilmore, 43 Fed. 318;

Union Pacific Ry. Co. v. Artist, 60 Fed. 365;

Laubheim v. Netherlands Steamship Company, 13 N. E. 781.

In the last mentioned case the court said:

> "If, by law or by choice, the defendant was bound to provide a surgeon for its ships, its duty to the passenger was to select a reasonably competent man for that office, and it is liable only for a neglect of that duty. *Chapman v. Railway Co.,* 55 N. Y. 579; *McDonald v. Hospital,* 120 Mass. 432; *Secord v. Railway Co.,* 18 Fed. Rep. 221. It is responsible solely for its own negligence, and not for that of the surgeon employed. In performing such duty, it is bound only to the exercise of reasonable care and diligence, and is not compelled to select and employ the highest skill and longest experience."

In addition to all this, the libelant was properly treated by Dr. Taylor and his assistants, and received no injury or damage by reason of such treatment. The libelant received a very severe injury. Dr. Taylor testified as follows regarding the condition of the injuries:

"A. Why, he stayed there in the office—if I remember rightly he was bandaged up to some extent, when I looked at his arm, casual observation, I noticed that he had a bad compound fracture, and he was suffering considerable pain, and I managed, in the meantime, to get a fire lighted. It was quite cold, and I got the office warm, and then I examined him, and told him he would have to have some care taken and that he would have to go to the hospital.

Q. Did you then take him to the hospital?

A. Yes, as soon as I could get him there I sent him to the hospital.

Q. Now, what did you do at the hospital with him?

A. We took him there and I got my brother and nurse—the nurse was my brother's wife at that time, and I gave him an anaesthetic, took off the bandage and his clothing connected with it, and washed all around the arm and saw the condition of it.

Q. What was the condition of it?

A. The condition proved to be a fracture of both bones of the fore arm, a compound fracture; the skin was broken and the muscles were broken, the bones were sticking out.

Q. What was the condition of the muscles and soft tissue about the wound where the bones had protruded, as to whether or not they were damaged?

A. Well, they were all broken, severed and damaged very much; it was not a matter of how much cutting, but how much damaged and bruised.

Q. Jammed?

A. I would not call it jammed. It was bruised and broken.

Q. What condition were the bones in, or did you see them then?

A. Both bones were sticking out, and it was a ragged break.

Q. How did the bones appear to be damaged, if you know, or did you make a close examination?

A. I do not catch your meaning.

Q. Well, was it a clean break?

A. I understand now. No, the breaking, if you take a break like that (indicating with lead pencil) sometimes you would get a break, come down to ends, be concisive. In this the ends were broken and destroyed the covering of the bone, the periosteum was broken and torn along the ends both ways. It was about as bad a break as a person would want to see. I call it a very bad fracture. The periosteum was shattered and also the muscles; the periosteum, the covering of the bone, was broken and turned back.

Q. Now let me ask you, what effect would that have on the union of the bones, do you think?

A. It would retard the union.

Q. Would make the union of the bones more difficult, would it?

A. Yes sir.

Q. Now, how was he dressed when you first met him?

A. He had on rough, heavy clothing, rough, heavy shirt.

Q. Like the ordinary sailor?

A. Like the ordinary sailor would have. And the clothes were very dirty, and his arm was also very dirty. At the time we got him up there, there were bits of the shirt where the break was in the cut and in the wound."

The periosteum was badly damaged and stripped back from the ends of the bone. This, according to the undisputed testimony of the three doctors in the case, together with the infection, prevented the bones from properly uniting. There is not a word of testimony in the record that pretends to show that anything Dr. Taylor did or omitted to do prevented the bones from properly uniting, and even if this were a case brought direct against Dr. Taylor for malpractice, there is not a word of testimony anywhere in the record that would sustain a right of recovery against the doctors. In treating the libelant, Dr. Taylor followed the usual methods and practice of the profession generally. It is not contended that he did not do so, and no evidence is offered to show that the treatment that Dr. Taylor and his brother gave to the libelant was not the usual treatment and the usual method followed by the profession generally in like cases. Dr. W. J. Taylor testified as follows:

"A. Well, I do not know that it is necessary to tell you, but I have had practice doing this kind of work almost all the time. We followed the general way of doing that; washed it thoroughly with antiseptic soap, got all the dirt and fragments out of the wound. We did that first, cleaned all the arm, removed all the clothing, all the shreds from it, and got it good and clean. We took him to our surgery, our operating room, and we have an operating room equal to any in the state of Washington. We took him there, got him clean; applied iodine all in the wound; then I sewed up the muscles as best I could—adapted the bone the best I could, and got the wounds together and put on a dressing of splints, felt splints to hold it in place, and left it there, and it would have healed up if there had been a union; if not, then I would conclude something else had to be done.

Q. Was the arm badly swollen?

A. Yes, the arm was swollen.

Q. Was it painful?

A. Very painful.

Q. Now what did you do in the way of extensions, if anything?

A. There is a recognized splint that you put on for that. We put on splints that go to the elbow and hold it that way, just hold it with splints; I never heard of anyone putting a weight on. We put on that kind of a splint.

Q. Were the splints you put on up against the big part of the arm?

A. Yes sir.

Q. And then bandaged to the splint that makes the extensions?

A. Yes. Then, of course, if the arm got very painful, this had to be taken down again.

Q. The arm swelled up badly?

A. Yes, very, very badly.

Q. Was there any infection?

A. We took all this down, loosened them, cut the bandage down, if I remember rightly, that would make a hole down to the wound, and we put adhesive to hold it on the outside. I think that was on Tuesday following the Saturday, or Wednesday, I am not sure of that. It looked as though it were infected by the temperature going up, and we took the whole thing down and it was infected. Of course it was not the fracture we had to deal with at that time—we had to deal with the fracture, but the fracture was secondary to the infection.

Q. Now what do you mean by that, doctor?

A. I mean that the fracture has to be dealt with to get it healed up, but that the infection which came there,—it came, I do not know what the cause of it was, but that infection had to be eliminated before we could get the bone to heal.

Q. Then what did you proceed to do, so far as the infection was concerned?

A. Dressed and disinfected the parts filled with pus.

Q. How often did you dress and disinfect the wound—did you notice the infection on Wednesday, I think you said?

A. Well, I think it would be not less than once a day.

Q. It would not be less than once a day?

A. No. Of course I will explain this, of course the flesh had all been bruised and it had lost its vitality and when once infection had started that had to slough there was no vitality for that part of the arm, and it would slough and cause pus and infection.

Q. Now was it possible to reduce the fracture until you got rid of that infection?

A. Might reduce it but you could not get it to heal.

Q. What would be then a recognized method, in your profession, for treating that arm, from that time on?

A. To get it in as good a position as possible, get the bones in as good position as possible and treat the infection and get rid of the infection, apply dressings for that and also the swelling, which was great."

Dr. William H. Taylor testified as follows regarding the treatment of the libelant:

"A. He was taken to the surgery and given an anaesthetic. There was a splint and dressings, if I remember right, and that was taken off and revealed a wound of the forearm, a circular wound, about one and a half or two inches in diameter, through which both bones were protruding, and it showed a very ragged wound, the muscles were torn and the periosteum torn back from the bones, a very ugly looking wound. The arm was washed with antiseptic soap and solutions, and the pieces

of cloth and one thing or other that had worked into the wound were picked out and the wound bathed with iodine; the bones put back in position and dressings applied; splints applied and put back to bed.

Q. Now, what was the nature of the splints applied?

A. The usual splints, both kinds, anterior —what we call an angular splint, it comes down this way, from the upper part of the arm and comes down here, and is tied up here, and gives a pull, an extension to the arm.

Q. Do you know whether there was any particular name for that method?

A. It is just called anterior right-angular splints.

Q. In use by the profession?

A. In use by the profession for that kind of injury.

Q. You put the bones in proper position, did you?

A. Yes, the wound was open and they were put back in proper place, you could see them.

Q. And then, what, if anything, was done? Was there anything done with the muscles?

A. The muscles were torn and were all sewed up and the membranes.

Q. Did they make a covering over the bone?

A. Yes sir.

Q. And then you say he was put back to bed?

A. Yes sir.

Q. What care did he have when you put him to bed, what attention or care did he have after that time?

A. Well, he had the usual care passing the anaesthetic a nurse had to stay with him two or three hours, until he came out from the anaesthetic, to see that he kept the arm still, and see that he was all right. After that he was visited once or twice a day.

Q. By the doctor?

A. Yes sir.

Q. How were you equipped there as far as nurses were concerned to take proper care of patients?

A. Trained nurses.

Q. Were there trained nurses around Fondahn during his stay in the hospital.

A. All the time, yes sir."

Mrs. Taylor, a trained nurse (the head nurse at the hospital at the time), testified as follows:

"A. He was brought from down town and put into a ward and a trained nurse gave him a bath before he was taken to the surgery, because he was very dirty, and he had a night gown put on him and was taken to the surgery and I administered the anaesthetic.

Q. Who else was present?

A. Oh, the other nurse, Miss Peterson, and two doctors.

Q. Your husband and Dr. W. J. Taylor?

A. Dr. W. J. Taylor.

Q. Now, just what was done?

A. Well, the wound was washed with antiseptics, and iodine was put into the wound, and the bones, the fracture was set, and the muscles were sewn, sterile dressing put on and then the splints.

Q. Can you describe these splints, Mrs. Taylor, to us?

A. Well, it had an inner splint, on the inside of the arm above the elbow, and then two splints before the elbow, running from the elbow to the wrist; then he had another splint on the bottom of his hand to hold his fingers out.

Q. Now was this splint above, did it come back against the—

A. The inner part of the arm.

Q. Back against the inner part of the arm?

A. Yes sir.

Q. Now do you know what is called extension splints in that kind of treatment?

A. Yes sir.

Q. Were these the usual kind that were used?

A. Yes sir.

Q. Then, what if any bandages were put on?

A. Well, just cotton and bandages to hold the splints in place.

Q. For the purpose of holding the arm in place?

A. Yes sir.

Q. Now then what was done?

A. He was taken downstairs and put to bed.

Q. And what care did he receive after that time?

A. He had the ordinary nurse, care of a ward patient.

Q. And what attention did the doctors give him?

A. Well, they dressed him every day after his temperature started, after they had left him alone for two days, then his temperature came up and they unbound the arm and dressed it from that time on.

Q. Was the infection then in the arm?

A. Yes sir.

Q. Did you, as head nurse, see him there every day?

A. Yes sir.''

All of the testimony shows that the libelant was treated in the usual way and that everything was done for him that could have been done by any doctor in any place. It is true that the libelant himself testified that nothing was done for him, but it will be noticed that his testimony is very contradictory. In some places he will admit that certain splints and bandages were placed upon his

arm, and in other places he denies it. At any rate, his testimony in this regard cannot be given very serious consideration, in view of the testimony of the head nurse and the two doctors, who were disinterested witnesses in this case. Besides that, it is very unreasonable to suppose that this man would remain for eight days in a hospital and under the care of these doctors and nurses, without something being done for him in the way of treating his wound and reducing the fracture. The very purpose of putting the libelant under an anaesthetic, which he admits was done, was to dress the wound and reduce the fracture, all of which, of course, was done, just as testified to by the doctors and the nurse in charge.

All of the doctors, including Dr. Carter, who was called by libelant, testified that the reason the bones did not properly unite was because of the damage to the periosteum and the infection. The damage to the periosteum was caused by the severity of the injury. The infection followed almost as a matter of course on account of the condition of the wound and the condition of the sailor's body and clothing at the time of the accident. Dr. Carter and the other doctors testified that infection frequently occurs when an operation is performed at the hospital, where all of the precautions can

be taken against it, and that infection is much more likely to set in in case of a compound fracture, where the bones protrude through the skin, and dirt and bits of clothing are carried into the wound, and especially where the injured party remains in this condition for many hours before he is able to receive surgical treatment. Under the great weight of authority, if a doctor follows one of the well recognized methods of treatment in his profession and brings to the case reasonable care, he cannot be held responsible for the results, even though some different treatment might have proved more beneficial.

In the case of *Lorenz v. Booth,* 84 Wash. 550, which was a case brought for malpractice, the doctor in charge adopted the Lane method of cutting down and reducing the fracture of the bones, by the use of the Lane Plate. Infection set in and the result was bad. On the question of method, the court said:

> "The most that can be said of this testimony in support of appellant's contention that respondent was negligent in adopting the Lane method, is that such method did not have at that time the unanimous approval of the medical profession. However, according to the only evidence here presented in appellant's behalf, that method did have the approval of at least

a respectable minority of the medical profession, who recognized it as a proper method of treatment. This, we think, is enough to absolve respondent from negligence, so far as his mere use of that method is concerned, there being no showing that he exercised other than his best judgment in choosing that method." Speaking of the infection, the court said:

"So we have nothing of a substantial character which would lend support to appellant's claim of negligence on the part of the respondent resulting in the infection, other than the bad result, in other words, the mere fact that the infection occurred. In *Peterson v. Wells,* 41 Wash. 693, 84 Pac. 608, this court recognized the rule that a mere 'bad result' is not of itself ordinarily sufficient to render an attending physician liable for negligence, that is, it is not ordinarily of itself proof of such physician's negligence. *Hoffman v. Watkins,* 78 Wash. 118, 138 Pac. 664; *Wurdemann v. Barnes,* 92 Wis. 206, 66 N. W. 111."

In the case of *Wells v. Ferry-Baker Lumber Company,* 57 Wash. 658, following the general authority, both in the federal and state courts, the court says:

"A physician and surgeon by taking charge of a case impliedly represents that he possesses, and the law imposes upon him the duty of possessing, reasonable skill and learning. He is not liable for mistakes if he uses the method recognized and approved by those reasonably skilled in the profession. He does not under-

take to effect a cure or restore a broken limb to its normal condition. If he treats the injury with a reasonable degree of skill and care, he is not responsible for the results."

In the case of *Hoffman v. Watkins,* 78 Wash. 118, the court said:

"Instructions were also requested by appellant, and refused, to the effect that negligence could not be inferred nor presumed from the failure to effect a cure, and that the condition of respondent's shoulder subsequent to appellant's treatment, did not of itself establish an inference that appellant had been negligent in his treatment. Such is the law, and the jury should have been so instructed."

Wood v. Barker, 13 N. W. 597;
Sims v. Parker, 41 Ill. Appeals 284;
Lawson v. Conaway, 16 S. E. 564;
30 Cyc. 1584.

So, in the case at bar, the fact that the bones did not unite, and that the wound became infected, under all the circumstances is not proof of negligence on the part of the doctor. The reason that the bones did not properly unite is clearly given and explained by all of the doctors, and as stated before, even if this case were brought directly against Dr. Taylor for malpractice, there is not a scintilla of evidence in the case to support the

charge. But in this case the duty of the ship was fulfilled when the captain exercised reasonable care in obtaining the services of a competent physician.

In *Union Pacific Railway Company v. Artist,* 60 Fed. 365, the court said:

> "It would be a hard rule, indeed—a rule calculated to repress the charitable instincts of men—that would compel those who have freely furnished such accommodations and services to pay for the negligence or mistakes of physicians or attendants that they have selected with reasonable care. No such rule has ever prevailed in this country. The rule is that those who furnish hospital accommodations and medical attendance, not for the purpose of making profit thereby, but out of charity, or in the course of the administration of a charitable enterprise, are not liable for the malpractice of the physicians or the negligence of the attendants they employ, but are responsible only for their own want of ordinary care in selecting them. *McDonald v. Hospital,* 120 Mass. 432; *Insurance Patrol v. Boyd,* 120 Pa. St. 624, 647, 15 Atl. 553; *Van Tassell v. Hospital,* (Sup.) 15 N. Y. Supp. 620, and note; *Glavin v. Hospital,* 12 R. I. 411; *Laubheim v. Steamship Co.,* 107 N. Y. 228, 13 N. E. 781; *Secord v. Railway Co.,* 18 Fed. 221; *Richardson v. Coal Co.,* (Wash.) 32 Pac. 1012."

Simmons v. Hamilton Logging Company, 76 Wash. 370;

Rogerson v. Carbon Hill Coal Company, 10 Wash. 648;

Halver Engirbritson v. Tri State Cedar Com-

pany, vol. 49, Wash. Dec., 91, in which the court said:

"There is no contention in this case that the respondent did not exercise reasonable care in the selection of a surgeon and hospital. The respondent was, therefore, not liable for malpractice, if there was any. We are satisfied that the trial court should have directed a verdict in favor of the defendant upon the motion of the defendant before the case was submitted to the jury. The judgment notwithstanding the verdict was therefore properly granted."

It is contended by libelant that the captain did not make definite arrangements for the payment of Dr. Taylor, and he tries to make a great deal of an apparent difference in the understanding of Dr. Taylor and the captain as to whether Dr. Taylor was a *marine* doctor or not. Apparently the captain thought that he was placing libelant in the hands of an emergency marine doctor, while Dr. Taylor understood that the captain left the libelant there for immediate treatment and the ship would pay him for his services. This misunderstanding, if there was one, did not affect the treatment libelant obtained and of course becomes immaterial. The captain did place the libelant in the hands and

under the care of a competent and skilled physician and surgeon. He did receive proper treatment from this physician and surgeon. The doctor understood that he was to receive his pay from the vessel, and proceeded accordingly. No promise and no different or more definite arrangements for the doctor's pay would have made a particle of difference in the treatment the libelant received. He received the best. But in view of what counsel has said, we desire to call the court's attention to the following:

In the first place, the captain asked the officers of two tug boats and the captain of the U. S. vessel "Snohomish" if there was a marine doctor at Port Angeles, and they all told him that there was. When he met Dr. Taylor he asked Dr. Taylor if he was a marine doctor. The captain says he understood him to say that he was a marine doctor. Dr. Taylor, however, says that he told the captain that he frequently did emergency marine work, but that he was not a regular marine doctor. The testimony shows that there are marine doctors stationed at many small places on Puget Sound, and along the coast, and in some places the government has engaged the services of private practitioners to do emergency work, and Dr. Taylor has done emergency work for the government at Port Angeles,

as shown by the undisputed testimony. So, under all the circumstances, the captain undoubtedly thought that he was placing the libelant in the hands of a marine doctor, and he left a permit with the doctor to admit the libelant to the Port Townsend Marine Hospital as soon as the libelant was able to go there.

On the other hand, Dr. Taylor understood that he was to treat the libelant and receive his fees from the vessel. Upon the question of fees, the doctor testified as follows:

> "A. If I may explain to the Court, this was in the morning, six o'clock, there was the man sitting in my office; he was suffering awful pain; the man got up and walked and then had to lie down. I gave him something to ease his pain, morphine, the man was in very great pain. I had to get him relieved as quick as I could, and there was no bartering there.
>
> Q. Was there any discussion about fees?
>
> A. No, I was not in a position, having a man suffering, I was going to do that emergency work while I could. I have these cases frequently from ships and from the woods there and I never stop, I cannot stop to barter with a man about the pay. This man, you understand, had a very severe case. He was in a bad way."

And on cross-examination, the doctor testified as follows:

"A. No sir. The first reference to pay, if you wish me to tell you that, was when Fondahn was leaving. He left on Saturday. Fondahn had with him a hundred and some dollars which I deposited in the bank, and I told Fondahn that the way I did with these cases off merchant ships, not off government ships, that the captain or the man himself had always paid me and I gave him a receipt so that he could collect it from the company or wherever he could.

Q. Nothing else said either way about it?

A. And he had the money with him, and if he would do that it would save me a lot of trouble, and he would be closer to the people than I would, and there was not a word about it and he agreed to it.

Q. The captain made no arrangements whatever?

A. Nothing whatever. The captain could not have been there at the end of the service, and as I told the man he could pay me or I would get it from the company afterwards."

And again, the doctor testified as follows:

"A. I told him what the charges of the case would be, that that was as little as I could make it, thirty dollars, and if he would pay me the thirty dollars I would give him a receipt for it and he could collect it probably much easier than I could and quicker. To which he made no objection whatever. He says I will pay you and take a receipt, and put the receipt in on the case. I did not know what he meant—probably that the company would pay it."

All of this testimony is undisputed, and it is very clear that the question of whether or not Dr.

Taylor was a *marine* doctor or whether any definite arrangement was made for the payment of his fees or not, had nothing to do with the method or extent of the treatment libelant received. Counsel on cross-examination tried to get Dr. Taylor to state that his treatment was merely temporary, but Dr. Taylor testified as follows:

> "Q. You only pretended to treat him temporarily, to give him temporary treatment?
>
> A. Temporary treatment until he was able to go to Port Townsend. But you will understand that that treatment would be the same as if I was going to treat him permanently." Later, the doctor testified as follows:
>
> "Q. Was that treatment any different in any degree or in any particular from the treatment that you would have given the man if he was going to stay with you right there?
>
> A. Absolutely not."

The doctor also testified that the question of fees had absolutely nothing to do with his treatment. He testified as follows:

> "Q. One more question. Whatever might have been the circumstances of a man coming there, or whatever may have been said at the time that he was left with you, or whether or not arrangements were made regarding your fees, did that make any difference with your treatment of this man?

"Mr. Landon: I object as calling for a conclusion and leading.

A. No sir. Whether I were paid or not, my treatment would be the same, because, if you will let me explain further, you get emergency cases and you do not know whether you will ever get paid. Whether from the boats or street or woods, we treat them all the same, the best treatment.

Q. Now was there anything omitted in the treatment of this man that you would have given him if there had been any different arrangements made at the time he was left there?

A. No sir."

And he further testified:

"Q. Now did the fact that you knew that he was going to the Marine Hospital, and that Mr. Fondahn knew that he was going there as soon as he was able, affect your treatment of the man in any way?

A. No sir."

So, from the testimony of all the physicians, it is clear that Mr. Fondahn, the libelant, was taken to a competent and skilled physician and surgeon, was given competent surgical and medical and hospital treatment, and was sent to the Marine Hospital as soon as he was able to go.

Another very immaterial matter that has been extensively discussed by counsel is the question of the permit given to the doctor by the captain of

the vessel to admit the sailor to the Marine Hospital. But what is the use of arguing this question? It had absolutely nothing to do with libelant's treatment. It had nothing to do with the accident and cannot be material in any sense. If the allegations of the libel were true, namely, that the captain deceived Dr. Taylor by telling him that the permit would enable Dr. Taylor to get his pay for attending the libelant and that after the captain was gone Dr. Taylor discovered that he had been deceived, and for that reason refused to treat and care for the libelant, then there would be something in this question of the permit, but in view of the facts in the case, it becomes absolutely immaterial.

There is not a word of the testimony that tends to show that the libelant would not have sustained at least the same amount of damage, if he had been taken direct to the Marine Hospital at Port Townsend—it may be that he would have suffered a great deal more. The delay might have caused gangrene in the wound or necrosis of the bone. The testimony shows clearly that the bone is not now infected, as alleged in the libel. The wound is completely healed, and from the statements of the doctors, all that is now necessary is to perform another oper-

ation, and wire the bones together. Dr. Carter, according to his own testimony, continued doing just what Dr. Taylor was doing, namely, to clear up the infection and heal the wound before cutting down to wire the bones or put on Lane Plates. All of the doctors agree that as soon as the infection appeared, the primary and first thing to do was to clear up the infection. This Dr. Taylor was doing at the time the libelant went to Port Townsend. When the libelant reached Port Townsend, Dr. Carter and others there held a consultation and pursued the same course that Dr. Taylor had been pursuing, and as soon as the infection was cleared up and the wound was healed, they cut down and put on Lane Plates, but on account of the damage to the periosteum, the bones did not properly unite, and another operation is necessary. But no one is to blame for this. It is one of the conditions to be expected to follow from such a severe injury to the bone, the periosteum and the soft tissues. We have in this case a severe unfortunate injury, and, up to the present time, a poor recovery, but it has been from the start one of those unfortunate things over which no one had control and for which no one is to blame.

There are many statements in libelant's brief

that we will not refer to. The testimony is short, and we presume that the court will read it. In doing so, it will be quickly ascertained that many of these statements and conclusions made by counsel are wholly unwarranted under the testimony.

Counsel refers to the testimony of Dr. Carter, the marine doctor at Port Townsend who received the libelant after remaining eight days with Dr. Taylor. Dr. Carter's testimony as to the proper method of procedure from start to finish corroborates the testimony of Dr. Taylor. There is no difference of opinion between the doctors, but in Dr. Carter's testimony the statements of libelant are not corroborated. Dr. Taylor says that he bandaged libelant's arm when he started for Port Townsend, to protect it from the cold weather and to keep it from moving or jarring, that might make it worse. This is perfectly natural, and is what any doctor would do. The libelant at this time was able to walk unassisted on the boat at Port Angeles, and in two hours from that time he was at the Marine Hospital at Port Townsend. Dr. Carter and his superiors pursued the same method after the libelant reached the Marine Hospital at Port Townsend that Dr. Taylor had been pursuing, namely, treating the infection so that the

wound would heal before they operated and wired the bones or put on Lane Plates. It is admitted by all the doctors that this was essential and necessary. If they undertook to perform this operation while the wound was open and infected, it might result in bone infection.

Libelant in his brief refers to the fact that he was placed in the charge of Dr. Taylor on Saturday and nothing was done until the following Tuesday or Wednesday. There is no testimony to show that anything should have been done with the arm during that period, but on the contrary there was nothing further to do so far as the arm itself was concerned during that period. It would be ridiculous to say that the doctors should have changed the bandages and splints within the time specified. This is not the method of practice. When the wound was thoroughly cleansed and the bones put in proper apposition and the arm bandaged and extension splints placed on them, as was done in this case, the practice is to leave it alone, unless infection or other complications set in. Of course when infection set in on Tuesday or Wednesday, it became necessary, as the doctors testified, to take down the bandages and the splints to treat the infection. All of the doctors testified that the infection then

became the primary object of treatment. Nothing more could be done with the bones until the infection was cured and the wound healed. Both Doctors Taylor and the trained nurse in charge told in detail what treatment they gave, and if this treatment was not in accordance with the methods and practice of the profession, it would have been easy enough for libelant and his counsel to show by expert testimony that it was improper and not the kind of treatment recognized by the profession.

Libelant, in closing his brief, quotes a letter written by Dr. Taylor to the surgeon in charge of the marine hospital at Port Townsend. This letter is fully set out on page 146 of the Record and is fully explained by Dr. Taylor on pages 147, 148, 149 and 150 of the record. Dr. Taylor explains that he had treated numerous sailors from United States boats and merchant boats, and that he had been trying to get a contract with the government to treat sailors at his hospital at Port Angeles. He had an arrangement with the government to pay *for* emergency work from the government boats, and he wanted to get an arrangement with the government to treat sailors from merchant boats, and he had already taken this matter up with the government officials. On page 148 Dr. Taylor says:

"A. Yes, I had been trying and had tried after this time and tried to such an extent that the Government issued papers asking for contracts and for us to give bids, and they awarded a contract the first of July of this year."

The government has similar contracts with many private doctors and hospitals in the smaller ports up and down the coast. This letter states: "As we occasionally have patients from the different boats, we would like to know if any arrangements could be made whereby we could treat them or administer first aid. If you would send us the information regarding this matter we would be grateful." This refers to this class of cases. The forepart of this letter has nothing to do with the libelant or his treatment. On page 149 the doctor testified as follows:

"Q. Now where you say: 'As we have no arrangements for this class,' did you mean to intimate by that that you had no arrangements for taking care of Mr. Fondahn?

A. What I meant by that was, arrangement for merchant vessels with the government, I had arrangements with the captain."

We do not understand why counsel quotes this letter, unless he hopes that it may leave an inference with the Court that no arrangements were made with the doctor to care for the libelant. In view

of the doctor's positive testimony that the captain's arrangement was sufficient and satisfactory to him, and in view of his clear explanation of the letter, libelant's counsel's purpose in quoting the letter must fail.

If we understand libelant's brief, his complaint is, first, that he should have been taken to Port Townsend instead of Port Angeles. It is admitted that Port Angeles was the nearest port. He does not show that he would have received any different or better treatment at Port Townsend than at Port Angeles. If the doctors and the nurse can be believed, he received the best treatment and the same kind of treatment that he would have received at Port Townsend. Second, he claims that the captain made no definite arrangements to pay the doctor at Port Townsend. But the Doctor himself says that he understood that he was to treat the libelant and the ship would pay him. He proceeded to treat him upon this theory, and the arrangement one way or another did not in any way affect the treatment that the libelant received. The libelant fails to show that the payment of any amount of money or the promise of any sum whatever made any difference in the care and treatment he received, and fails to show that he was damaged

in any way thereby. Third, he complains that the captain gave the doctor at Port Angeles a permit to admit him to the hospital. This is just what the captain should have done. He could not have entered the hospital without this permit. The giving of the permit did not affect this treatment in any way and cannot in any way have damaged him.

There is no testimony in the record and counsel for libelant makes no statement or argument in his brief in support of the contention that the libelant has been damaged by reason of any act of neglect on the part of this ship. He is content to quote some of the testimony of the libelant and a few statements of other witnesses, but omits to point out to the Court wherein the libelant has been damaged in any way by reason of the neglect of the master of this ship.

Since the accident the libelant has had the services of two doctors and a nurse at Port Angeles for a period of eight days, who gave the best treatment known to the profession, and since that time he has been under the care of a whole corps of doctors at Port Townsend in the Marine Hospital. On account of the seriousness of the injury, they were unable in the first instance to bring about perfect results. According to Dr. Carter and the

other physicians, it will take another operation to secure proper and perfect union of the bones. But this condition is not due to neglect or failure of anyone, but in spite of competent and efficient medical and surgical treatment.

We have not attempted to quote extensively from the testimony, for we feel that the Court will read over this testimony before rendering a decision. We ask the Court particularly to examine the testimony of the doctors who treated the libelant. Such an examination will show that the libelant was given competent treatment and was accorded every attention. The testimony will show conclusively that the captain exercised reasonable care in taking the libelant to the nearest port and in the selection of proper medical, surgical, and hospital treatment. The captain could have done no more. He could not have taken the libelant to any port where he could have received better treatment. No arrangement and no promise for the payment of money would have afforded the libelant better or more efficient treatment. The captain acted promptly and carefully and was fortunate indeed to get the libelant to the nearest port as soon as he did, and was fortunate in securing the services of good physicians and surgeons and hospital attendants. There was

nothing more—there was nothing better, that any man could have done.

We submit that under the evidence and the law, the judgment of the District Court is right and should be sustained.

R. A. BALLINGER,
ALFRED BATTLE,
R. A. HULBERT,
BRUCE C. SHORTS,
Proctors for Respondent.